

Pursuant to Northern District of California Civil Local Rule (“Local Rule”) 16-9, the parties to these actions¹ jointly submit this case management statement and proposed case schedule.

I. Case Status

These two related putative class actions assert claims under Illinois’s Biometric Information Privacy Act. The parties’ respective statements concerning the alleged facts are set forth in their initial Rule 26(f) Case Management Statements. *See* n.1 *supra*.

On June 29, 2016, Facebook moved to dismiss Plaintiffs’ complaints for lack of Article III standing under the Supreme Court’s decision in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016). Dkt. No. 129. The Court heard oral argument on this motion on October 27, 2016, and took the motion under submission. Dkt. No. 162.

On February 6, 2017, the Court entered the parties’ stipulation to amend the Court’s prior scheduling order, establishing the last operative pretrial case deadlines. *See* Dkt. No. 190.

On February 7, 2017, the Court terminated Facebook’s pending motions to dismiss “for administrative purposes,” “find[ing] it advisable to wait for the Ninth Circuit’s guidance.” Dkt. No. 193. The Court stated that Facebook would be permitted to “renew the motions by filing notices of renewal after the Ninth Circuit ha[d] issued its decision” in the remanded *Spokeo* action, and that “[i]f, after reviewing the forthcoming decision, the parties wish to file supplemental briefs, they may jointly propose a schedule for the Court’s consideration.” *Id.*

On February 21, 2017, Facebook filed a motion for a stay of discovery and other case deadlines, and for a protective order precluding any discovery, until it is determined that the Court has jurisdiction in this case. Dkt. No. 196.

On February 27, 2017, upon stipulation by the parties, the Court stayed the cases for 90 days and vacated all deadlines. Dkt. No. 200.

¹ Plaintiffs Nimesh Patel, Adam Pezen, Carlo Licata, and Frederick Gullen, and Defendant Facebook, Inc. are collectively referred to herein as the “parties.” The parties incorporate by reference their previously submitted Case Management Statements, filed on December 8, 2015 (Dkt. No. 80, Case No. 3:15-cv-03747-JD) and June 22, 2016 (Dkt. No. 127 and Dkt. No. 38, Case No. 3:16-cv-00937-JD), which remain accurate except as superseded by this further Case Management Statement. Unless otherwise noted, all docket references are to Case No. 3:15-cv-03747-JD.

On June 2, 2017, the parties jointly requested a status conference, which has been scheduled for September 7, 2017. Dkt. No. 203.

On June 19, 2017, Facebook filed an administrative motion to renew its prior motions for a stay and a protective order. Dkt. No. 204. On June 23, 2017, Plaintiffs filed a response opposing in part Facebook's administrative motion to renew. Dkt. No. 206. On June 30, 2017, Plaintiffs filed an opposition to Facebook's renewed motion for a stay and a protective order. Dkt. No. 207.

On August 15, 2017, the Ninth Circuit issued its opinion on remand in *Spokeo, Robins v. Spokeo, Inc.*, __ F.3d __, 2017 WL 3480695 (9th Cir. Aug. 15, 2017). Facebook intends to renew its motions to dismiss for lack of standing, accompanied by additional briefing, shortly after the parties' status hearing.

The parties have conferred and propose that each side file, by September 25, 2017, a 10-page supplemental brief addressing the impact, if any, of the Ninth Circuit's *Spokeo* opinion on remand.

Since June, and while Facebook's motion for a stay has been pending, the parties have engaged in continuing discovery. Several discovery disputes have arisen that have now been briefed. *See* Dkt. Nos. 209, 211. Several other discovery disputes remain unresolved but are not yet ripe; Plaintiffs anticipate raising these disputes with the Court if the parties are unable to resolve them.

On August 24, 2017, this Court issued an order stating that, "[i]n addition to the status conference, the Court will take up on September 7, 2017, the parties' discovery disputes, Dkt. Nos. [209], [211], and Facebook's motion to stay, Dkt. No. [196]." *See* Dkt. No. 214.

Plaintiffs intend to move for class certification after the completion of fact discovery, as detailed in the parties' proposed schedule set forth below. The parties also anticipate filing summary judgment motions, motions to exclude expert testimony, and motions *in limine* in advance of trial.

II. Proposed Case Schedule

In light of the foregoing, the parties propose the following case schedules:

Event	Plaintiffs' Proposal	Defendant's Proposal
Deadline for fact discovery	December 15, 2017	Same

Event	Plaintiffs' Proposal	Defendant's Proposal
Expert discovery	December 15, 2017- April 19, 2018	Same
Opening expert reports	January 25, 2018	January 12, 2018
Responsive expert reports	March 7, 2018	March 2, 2018
Completion of expert depositions	April 19, 2018	April 15, 2018
Deadline for motions for class certification and dispositive motions	January 25, 2018	May 18, 2018
Deadline for any oppositions to motions for class certification or dispositive motions	March 7, 2018	June 18, 2018
Deadline for any replies in support of motions for class certification or dispositive motions	April 19, 2018	July 18, 2018
Final pre-trial conference	June 15, 2018 at 1:30 p.m.	September 13, 2018, 1:30 p.m.
Jury trial date	July 9, 2018	October 9, 2018

Facebook's Position: The parties agree on a December 15, 2017 deadline for fact discovery. However, they disagree regarding the timeline for expert discovery. Plaintiffs propose a deadline of April 19, 2018 for expert discovery—but they propose that motions for class certification and dispositive motions be filed by January 25, 2018. Plaintiffs' proposal contemplates that they will provide their experts' reports or declarations for the first time as attachments to their motions for class certification and/or summary judgment; only then would Facebook have the opportunity to depose their experts and prepare rebuttal reports, while simultaneously preparing its opposition to certification and any briefing on dispositive motions. This approach is both unfair and unworkable. As reflected in Facebook's proposal, expert discovery should be completed before these motions are filed, for at least two reasons.

First, the parties may file *Daubert* motions in connection with either class certification or summary judgment. See *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 982 (9th Cir. 2011); *McLaughlin on Class Actions* § 3:14 (10th ed. 2013) ("The Supreme Court's decisions reversing class certification in [*Dukes*] and [*Comcast*] should remove any vestigial doubt about the appropriateness of full-blown *Daubert* analysis at the class certification stage."). Under Plaintiffs' proposal, however, *Daubert* issues would not be ripe until after the briefing on class certification and

dispositive motions has closed. In addition, Plaintiffs' proposed schedule would improperly preclude either side from pursuing summary judgment before class certification.

Second, in moving for class certification and/or summary judgment, Plaintiffs will almost certainly rely on expert opinion testimony derived from an ongoing, multiple-week review of millions of lines of Facebook's source code. It would be all but impossible, as Plaintiffs' proposal contemplates, for Facebook to analyze Plaintiffs' experts' reports; depose the experts; prepare responsive reports from its own experts; and simultaneously brief class certification and any dispositive motions—all during just a single six-week period. In this case, where Plaintiffs are seeking hundreds of millions of dollars in statutory damages, Facebook must be afforded a full opportunity to address their experts' opinions in an orderly fashion. Scheduling expert disclosures and related expert discovery before class certification and dispositive motions is the most efficient and fairest way to proceed.

Plaintiffs' Position: Plaintiffs' proposed schedule is fair to both sides and accommodates Facebook's speculative concerns. Four months of expert discovery is more than enough. Six weeks is plenty time to depose an expert and write a brief. The source code is Facebook's own. Facebook simply wants to delay trial. Plaintiffs want trial in July.

DATED: August 31, 2017

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ATTESTATION

I, John Nadoleco, hereby attest, pursuant to N.D. Cal. Local Rule 5-1(i)(3), that concurrence to the filing of this document has been obtained from each signatory.

/s/ John Nadolenco
JOHN NADOLENCO

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2017, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 31, 2017.

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